

STATE OF SOUTH CAROLINA

(Caption of Case)

Traffic Exchange Agreement between Level 3  
Communications and Piedmont Rural Telephone  
Cooperative, Inc.

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
  
COVER SHEET

DOCKET

NUMBER: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

(Please type or print)

Submitted by: Margaret M. Fox

SC Bar Number: 65418

Address: McNair Law Firm, P. A.

Telephone: 803-799-9800

P. O. Box 11390

Fax: 803-753-3417

Columbia, SC 29211

Other:

Email: pfox@mcnair.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input checked="" type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

Print Form

Reset Form

MCNAIR  
ATTORNEYS

June 5, 2009

Margaret M. Fox

pfox@mcnair.net  
F (803) 753-3219

Charles L. A. Terreni  
Chief Clerk and Administrator  
South Carolina Public Service Commission  
Post Office Drawer 11649  
Columbia, South Carolina 29210

Re: Traffic Exchange Agreement between Level 3 Communications,  
LLC and Piedmont Rural Telephone Cooperative, Inc.

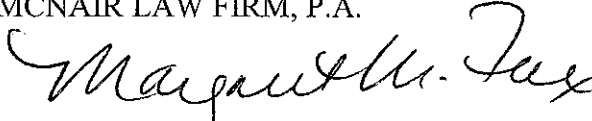
Dear Mr. Terreni:

Enclosed for filing please find a Traffic Exchange Agreement between  
Level 3 Communications, LLC and Piedmont Rural Telephone Cooperative,  
Inc.

Thank you for your assistance.

Very truly yours,

MCNAIR LAW FIRM, P.A.

  
Margaret M. Fox

MMF:rwm  
Enclosures

cc: Brandi M. Thompson  
Piedmont Rural Telephone Coop., Inc.

McNair Law Firm, P. A.  
The Tower at 1301 Gervais  
1301 Gervais Street, 11th Floor  
Columbia, SC 29201

Mailing Address  
P.O. Box 11390  
Columbia, SC 29211

mcnair.net

**TRAFFIC EXCHANGE AGREEMENT**

**Dated as of April 28, 2009**

**by and between**

**LEVEL 3 COMMUNICATIONS, LLC**

**and**

**PIEDMONT RURAL TELEPHONE COOPERATIVE, INC.**

## **TRAFFIC EXCHANGE AGREEMENT**

THIS TRAFFIC EXCHANGE AGREEMENT ("Agreement"), is effective when executed by both Parties (the "Effective Date") by and between Piedmont Rural Telephone Cooperative, Inc. ("PRTC"), with offices located at 201 Anderson Drive, P.O. Box 249, Laurens, SC 29360, and Level 3 Communications, LLC and its LEC affiliates with offices located at 1025 Eldorado Blvd., Broomfield, CO 80021 ("Level 3") (collectively the "Parties").

WHEREAS, Sections 251 (a) and (b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), has specific standards and procedures for interconnection, and the Parties intend that this Agreement meets those standards and procedures;

WHEREAS, the Parties desire to either indirectly or directly interconnect their respective networks for the purpose of delivery of Local/EAS Traffic (as defined below) for transport and termination on the other Party's network;

WHEREAS, Level 3 does not currently provide services in PRTC's local service area, but the Parties exchange Local/EAS Traffic between their networks and wish to establish an arrangement for the exchange of such traffic between their networks;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **1. DEFINITIONS**

Capitalized terms used in this Agreement shall have the meanings specified below in this Section, or as defined elsewhere within this Agreement. Any term used in this Agreement that is not specifically defined shall have the meaning ascribed to such term in the Act. If no meaning is specified in this Agreement or in the Act, then normal usage in the telecommunications industry shall apply.

- 1.1 "Act" means the Communications Act of 1934 (47 U.S.C. § 151 et seq.), as amended by the Telecommunications Act of 1996.
- 1.2 "Commission" means the South Carolina Public Service Commission.
- 1.3 "EAS" or Extended Area Service shall be as defined by the Commission and which allows as part of the basic rate plan 7-digit or 10-digit extended area local calling. EAS includes the Commission approved optional local calling plans such as Area Calling Plans (ACP).
- 1.4 "End User Customer" shall be defined as the residence or business subscriber that is the ultimate user of services provided by a Party or by a Retail Provider that is the customer of a Party where the Party is acting as a wholesale provider of services.

- 1.5 "IP-Enabled Traffic" means any IP-Enabled, real-time, multidirectional voice call, including, but not limited to, service that mimics traditional telephony. IP-Enabled Traffic includes: (i) voice traffic originating on an internet protocol connection (IPC), and which terminates on the Public Switched Telephone Network (PSTN); and (ii) voice traffic originated on the PSTN, and which terminates on an IPC. IP-Enabled Traffic may be nomadic in nature and therefore it may be difficult to determine the proper jurisdiction of such traffic. However, the Parties believe that the volume of nomadic IP-Enabled Traffic will be minimal and agree that jurisdiction of IP-Enabled Traffic will be determined based on the NPA-NXX-X of the dialed-from and dialed-to numbers.
- 1.6 "Originating Party" shall mean a Party whose End User Customer either directly or indirectly initiated a communication that results in Local/EAS Traffic being delivered to the Terminating Party.
- 1.7 "Local/EAS Traffic" is defined for all purposes as any call that is originated by an End User Customer of one Party who is physically located in one exchange, and that terminates to an End User Customer of the other Party who is physically located in another exchange, where the originating and the terminating exchanges have EAS between them, with the exception of IP-Enabled Traffic as defined in Section 1.5. The terms "exchange" and "EAS exchanges" are defined and specified in the PRTC, AT&T - South Carolina ("AT&T"), and Verizon General Subscriber Service Tariffs for the State of South Carolina. Local/EAS Traffic includes local residential and business voice traffic. For purposes of this Agreement, "Local/EAS Traffic" does not include intraLATA and interLATA toll traffic or commercial mobile radio services (CMRS) traffic.
- 1.8 "Retail Provider" is a third party provider of services to an End User Customer. A Retail Provider may or may not have their own facilities and may be either a Telecommunications Carrier or a non-Telecommunications Carrier.
- 1.9 "Terminating Party" shall mean a Party receiving Local/EAS Traffic from the End User Customers of the Originating Party.
- 1.10 "Tandem Transit Service or Transit Traffic" shall mean traffic that originates on a Party's network, and is transported through the other Party's Tandem to the Central Office of a third party CLEC, Interexchange Carrier, Commercial Mobile Radio Service ("CMRS") carrier, or other LEC, that subtends the relevant Tandem to which the originating Party delivers such traffic. Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide ("LERG"). Switched Access Service traffic is not Tandem Transit Traffic.

## **2. INTERCONNECTION**

- 2.1 The Parties shall use best efforts to install and maintain a reliable interconnection architecture. The Parties may: (i) complete calls through the switch of a transit provider with whom both Parties are interconnected ("Indirect Interconnection"); or (ii) establish direct interconnection of the Parties' networks ("Direct Interconnection"). As of the Effective Date of this Agreement each Party shall, at its own cost, program and update its

own switches and network systems according to the LERG in a timely fashion to recognize and route traffic to and from the other Party's assigned NXX-X codes within the EAS area. An NXX-X assigned to Level 3 in a rate center that is EAS from PRTC, shall be included in any local dialing plan or EAS dialing scope, or similar program to the same extent as any other NXX-X in the same rate center. Neither Party will block the telephone numbers or Local/EAS Traffic of the other Party, and appropriately load in the LERG such NXX-X codes as are associated with a Party's local calling area and mandatory EAS. Each Party will transport and terminate any and all Local/EAS Traffic received from the other Party.

**2.2** Indirect Interconnection. Each Party will honor the other Party's arrangements with a third-party tandem switch service provider for the delivery of Local/EAS Traffic for termination to the other Party. Each Party shall be responsible for all costs and arrangements associated with Local/EAS Traffic originating on their network and sent through a third party network.

**2.3** Direct Interconnection. The Parties agree to negotiate in good faith to establish and implement arrangements for direct interconnection of their respective networks at a single point of interconnection ("POI") at Piedmont's Laurens Rural tandem (LRNSSCXB03T) when the total amount of Local/EAS Traffic indirectly exchanged between the Parties exceeds two (2) DS-1s as measured at the busy hour for three consecutive months (the "Threshold"). Pursuant to Section 2.3 of the October 7, 2008 Memorandum of Understanding ("MOU") executed by the Parties pursuant to the Settlement Agreement approved by the South Carolina Public Service Commission in Docket No. 2007-187-C on July 16, 2008 between Level 3 and the South Carolina Telephone Coalition of which PRTC is a member (the "Settlement Agreement"), the Parties agree that as of the Effective Date of this Agreement, the volume of Local/EAS Traffic exchanged meets this Threshold for a direct interconnection. The Parties agree to work together to issue the appropriate access service request (ASR) for the direct interconnection facilities to Piedmont's Laurens Rural tandem ("the POI") within ninety (90) days of the Effective Date of this Agreement. Both Parties shall provide resources to support normal installation intervals for the direct interconnection facilities, including testing. If installation is delayed for reasons beyond Level 3's control, Level 3 will notify PRTC of such delay and provide the reason for the delay.

**2.3.1** Each Party shall bear full operational and financial responsibility for establishing and maintaining its network on its side of the POI. Such interconnection may be achieved by the use of either Party's facilities or the leasing of facilities from a third-party carrier. The capacity of interconnection facilities provided by each Party will be based on mutual forecasts and sound engineering practices. Any interconnection trunks established under this Section shall be two-way in nature, and the Parties agree to employ SS7 signaling parameters in routing Local/EAS Traffic over these facilities.

**2.3.2** As outlined in Section 2.4 of the MOU, the Parties designated and exchanged contact information for network planning personnel. The designated personnel and any other appropriate network planning personnel from both

Parties will continue to work together as necessary to discuss the implementation of the direct connection of the networks.

**2.3.3** In the event the total amount of Local/EAS Traffic falls below the Threshold for 3 consecutive months, after written notification from one Party to the other Party, the Parties agree to negotiate in good faith to promptly discuss the removal of the direct interconnection facilities established pursuant to Section 2.3 preceding. Notwithstanding the preceding sentence, the facilities in question shall be removed no later than three (3) months after the written notification has been provided and upon removal of such facilities the exchange of Local/EAS Traffic between the Parties shall be in accordance with the terms hereof.

**2.4** Intercarrier Compensation. Because the Local/EAS Traffic exchanged between the Parties is roughly balanced, the Parties will be compensated on a bill and keep basis. Compensation for InterLATA and IntraLATA toll traffic will be in accordance with each Party's appropriate access tariff or in the case of Level 3, the Settlement Agreement.

**2.5** Call Records. Each Party shall pass industry standard call record and/or signalling information on each call delivered to the other Party to the extent technically feasible. Neither Party shall knowingly strip or alter call records and/or signalling information to disguise the jurisdiction of a call or permit third parties to do so for traffic that Party delivers to the other Party.

### **3. GENERAL RESPONSIBILITIES OF THE PARTIES.**

- 3.1** Upon request by the other Party, but no sooner than thirty (30) days after the Effective Date of this Agreement, and no more than once in each six (6) month period thereafter, each Party shall provide the other Party with a rolling, six (6) calendar month, non-binding good faith forecast of its volume of originated Local/EAS Traffic. The Parties agree that each forecast provided shall be deemed "Proprietary Information" under this Agreement.
- 3.2** Neither Party shall use any service provided pursuant this Agreement or related thereto in any manner that interferes with third parties in the use of their service, prevents third parties from using their service, impairs the quality of service to other carriers or to either Party's End User Customers, or causes electrical hazards to either Party's personnel, damage to either Party's equipment, or malfunction of either Party's billing, transit or service equipment (individually and collectively, ("Network Harm"). If Network Harm shall occur or if a Party reasonably determines that Network Harm is imminent, such Party shall, where practicable, notify the other Party that temporary discontinuance or refusal of service may be required; provided, however, wherever prior notice is not practicable, such Party may temporarily discontinue or refuse service immediately, if such action is reasonable under the circumstances. In case of such temporary discontinuance or refusal, such Party shall: promptly notify the other Party of such temporary discontinuance or refusal; and afford the other Party the opportunity to correct the situation which gave rise to such temporary discontinuance or refusal.
- 3.3** The Parties shall implement local number portability as may be required under applicable law. The Parties acknowledge that applicable law does not currently mandate location portability.
- 3.4** Each Party is responsible for all traffic it delivers to the other Party, including but not limited to voice traffic, IP-Enabled Traffic, ISP-Bound Traffic, Local/EAS Traffic and toll traffic. Under this Section 251 Agreement, each Party is responsible for properly compensating the other Party for the termination of all such traffic that it sends to the other Party, except for compensation for Local/EAS Traffic as specified in Section 2.4. Neither Party shall provision any of its services in a manner that permits the circumvention of applicable switched access charges. In addition, each Party is required to comply with any technical requirements imposed by the FCC or the Commission regarding the exchange of such Traffic. Each Party is solely responsible for traffic originated by its End User Customers (or its Retail Provider customer's End User Customers) exchanged over the interconnection facilities regardless of whether the traffic is terminated to the other Party's End User Customer (or its Retail Provider customer's End User Customers).
- 3.5** The Parties understand and agree that this Agreement permits a Party to provide a wholesale telecommunications service to a third-party Retail Provider; however, under no circumstances shall such wholesale telecommunications service be deemed, treated or compensated as a Tandem Transit Service or Transit Traffic. Indirect service for traffic exchange provided by either Party is considered to be the provision of end office



switching functions. Neither Party is acting as a transit provider on behalf of the other Party under this Agreement and therefore this Agreement does not govern any transiting services.

- 3.6 Each Party agrees that it shall be the other Party's sole contact for all services provided hereunder. The Parties have no obligation to respond to requests from the other Party's third-party Retail Provider customers for information or services under this Agreement. The Parties agree to exchange and to update contact and referral information for all purposes herein.
- 3.7 Neither Party shall knowingly strip, alter, modify, add, delete, change or incorrectly assign Signaling or Signaling Parameters ("Misclassified Traffic") for the purpose of circumventing applicable switched access charges. The Parties also acknowledge that, due to the technical nature of call origination, certain traffic may be properly transmitted without all the Signaling and Signaling Parameters ("Unclassified Traffic") and shall not be considered Misclassified Traffic.
- 3.8 If a terminating Party determines in good faith, through reasonable evaluation of their records, call information, traffic data or other information, in any month that traffic delivered by the originating Party is Misclassified Traffic, the terminating Party will provide sufficient information, including its reasoning as to why the traffic is misclassified, as notification to the other Party. Upon receipt of such notification, the Party originating such traffic shall be permitted to investigate and identify the alleged Misclassified Traffic. If the originating Party disagrees with the terminating Party's determination that traffic has been misclassified, the originating Party, within sixty (60) days of its receipt of the call detail records from terminating Party, will provide the terminating Party written notice of its dispute along with all documentation supporting its challenge to the originating Party's challenge of the terminating Party's claim. If the Parties are not able to mutually agree as to the proper treatment of the traffic based upon the documentation produced, the Parties agree that the Dispute Resolution provisions in Section 4 of this Agreement may be invoked.
  - 3.8.1 To the extent the dispute under this section is resolved in favor of the terminating Party, the originating Party agrees to pay the terminating Party's intrastate access rates on all Misclassified Traffic.
  - 3.8.2 The Party originating Misclassified Traffic agrees to take all reasonable steps to cease all actions, and cancel or reroute any service that is permitting the delivery of Misclassified Traffic.
  - 3.8.3 Following the resolution of a dispute involving Misclassified Traffic, if it is confirmed that a Party continues to deliver the same Misclassified Traffic, that was subject to the dispute, to the other Party which constitutes more than two percent (2%) of the total traffic originated by such Party during any consecutive three (3)-month period, such Party shall be in Default of this Agreement, subject to Section 5.2 below. To the extent that the Parties have invoked the Dispute Resolution procedures to determine the proper treatment or quantity of the Misclassified Traffic, a Default shall not occur while such

dispute is pending. Each Party shall make a good faith effort to resolve any such pending dispute within a reasonable time period.

**3.9** Each Party shall take all reasonable steps to correct the causes of Misclassified Traffic.

**3.10** In the event of a dispute with regard to Misclassified Traffic, each Party shall have the right to audit the other Party's records to ensure that no traffic is misrouted, misclassified, or is otherwise in circumvention of access charges. Both Parties shall cooperate in providing the records required to conduct such audits, and any audit will be performed as follows: (i) following at least sixty (60) business days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules. Upon request, the audited Party will reasonably cooperate in identifying the physical location of the End User Customer originating or terminating the call. No Party shall have the right to conduct an audit more than one time in a consecutive twelve-month period ; provided, however, that the auditing Party shall have the right to conduct an additional audit within that period if the preceding audit concluded that 20% or more of the total traffic exchanged during the audit period was Misclassified Traffic. Any disputes concerning audit results will be resolved pursuant to the Dispute Resolution provisions in Section 4 of this Agreement.

#### **4. DISPUTE RESOLUTION**

Should a dispute arise between the Parties with respect to implementation or enforcement of this Agreement, or with respect to the billing of and payment for services or facilities under this Agreement, either Party may give written notice of its intent to seek dispute resolution pursuant to this Section 4. Upon receipt of notice, representatives of the Parties with primary responsibility for the area(s) of dispute shall first meet and confer as often as they deem reasonably necessary to resolve the dispute. If these initial negotiations fail to be successfully concluded within forty-five (45) days from receipt of the notice, either Party may request in writing that the dispute be escalated to the Vice President, or equivalent authority of the company, who is responsible for either the revenue or cost of the item(s) in dispute. If these negotiations fail to resolve the dispute within sixty (60) calendar days after the matter has been escalated, either Party may seek relief from the applicable Commission or any other regulatory body or court of competent jurisdiction. Notwithstanding the foregoing, in the event that a dispute impairs the service a Party provides to its End User Customers, the affected Party may seek immediate relief from the applicable Commission or any other regulatory body or court of competent jurisdiction. Pending resolution of the dispute, each Party shall continue to perform its obligations under this Agreement as it had performed in advance of submission of the dispute. In the case of billing disputes, the Parties agree that all amounts that are undisputed shall be paid in a timely manner.

## **5. TERM AND TERMINATION.**

**5.1** The initial term of this Agreement shall be two (2) years from the Effective Date of this Agreement ("Initial Term" or "Term"). Upon expiration of the Initial Term, this Agreement shall automatically be renewed for successive and additional one (1) year periods (each, a "Renewal Term" or "Term"). Either Party may, no later than ninety (90) days in advance of the expiration of the Initial Term or Renewal Term, deliver to the other Party written notice to renegotiate this Agreement, in which event the Parties shall commence in good faith and in a timely manner such negotiations. In the event such negotiations are not successfully concluded prior to the expiration of the Initial Term or Renewal Term or such date as the Parties may otherwise agree, the Parties agree to take such steps as are necessary and prudent to transition the arrangements hereunder in order to prevent any service disruptions to End User Customers (the "Transition Period"). During the pendency of the preceding referenced negotiations and/or Transition Period, this Agreement shall remain in full force and effect.

**5.2** If a Party fails to observe or perform any material term or condition of this Agreement and such failure does not materially and adversely affect the operation or reliability of the non-defaulting Party's network or the End User Customers of either Party, the Parties shall initiate the dispute resolution procedure set forth in Section 4 of this Agreement (and neither Party shall have the right to terminate this Agreement as a result of such breach). If a Party fails to observe or perform any material term or condition of this Agreement and such failure materially and adversely affects the operation or reliability of the non-defaulting Party's network or impacts a Party's ability to fulfill End User Customer commitments, then (a) the non-defaulting Party may deliver written notice of such default to the other Party (which notice shall specify that the default materially and adversely affects the operation and reliability of the non-defaulting Party's network and (b) which notice shall contain comprehensive, specific detail as to the foundation of the asserted violation and why it is considered material). If the default is not remedied within thirty (30) days after receipt of written notice, then the non-defaulting Party may discontinue its performance and terminate this Agreement, and pursue any other remedies available at law or in equity. A Party's failure to exercise any of its rights hereunder shall not constitute or be construed by the as a waiver of any past, present, or future right or remedy.

## **6. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

**NEITHER PARTY MAKES ANY WARRANTIES, REPRESENTATIONS OR AGREEMENTS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, AS TO THE SERVICES AND MATTERS ADDRESSED IN THIS AGREEMENT, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT.**

## **7. INDEMNIFICATION**

Subject to the limitations set forth in Section 8, each Party (the "Indemnifying Party") shall release, defend, indemnify and save harmless the other Party, its directors, officers, employees, servants, agents, affiliates, subsidiaries and parent (collectively, the "Indemnified Party"), from and against any and all Losses which are proximately caused by:

- (a) any breach or non-fulfillment of any representation, covenant, term, condition or agreement on the part of the Indemnifying Party under this Agreement;
- (b) the gross negligence or willful misconduct of the Indemnifying Party or any of its directors, officers, employees, agents, affiliates, subsidiaries and parent related to the subject matter of this Agreement and regardless of the form of action;
- (c) the installation, maintenance, repair, replacement, presence, engineering, use or removal of the Indemnifying Party's equipment; or
- (d) the violation or alleged violation by the Indemnifying Party or any of its directors, officers, employees, servants, agents, affiliates, subsidiaries and parent of any federal, state, or local law, regulation, permit, or agency requirement.

"Loss" or "Losses" means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees). The obligations of this Section shall survive the termination, cancellation, modification or rescission of this Agreement.

## **8. LIMITATION OF LIABILITY**

**IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY WHATSOEVER TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR REVENUE IN CONNECTION WITH OR ARISING FROM ITS PERFORMANCE OR FAILURE TO PERFORM HEREUNDER (COLLECTIVELY, "CONSEQUENTIAL DAMAGES"), EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, THAT THE FOREGOING SHALL NOT LIMIT A PARTY'S OBLIGATION UNDER THIS AGREEMENT TO INDEMNIFY, DEFEND AND HOLD THE OTHER PARTY HARMLESS AGAINST ANY AMOUNTS PAYABLE TO A THIRD PARTY, INCLUDING ANY LOSSES AND CONSEQUENTIAL DAMAGES CLAIMED BY SUCH THIRD PARTY.**

## **9. MISCELLANEOUS**

- 9.1** Both Parties reserve their rights to take advocacy positions before the Commission, other state commissions, the FCC and in any other state or federal regulatory, legislative, or judicial forum that differ from the compromises reached in this Agreement. This

Agreement does not affect, and neither Party waives, any rights including, but not limited to, the rights afforded under 47 U.S.C 251 (f). Except as specifically provided for in this Agreement, neither Party waives any rights it may have under the Act and the rules and regulations promulgated thereunder by the FCC and/or the Commission.

- 9.2 Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (individually or collectively, a "Force Majeure").
- 9.3 CPNI and Proprietary Information. Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data (including without limitation call detail data, usage information in any form, End User Customer account data and Customer Proprietary Network Information ["CPNI"] as that term is defined by the Act), computer programs and other software and documentation of one Party (a "Disclosing Party") that is furnished or made available or otherwise disclosed to the other Party or any of such other Party's employees, contractors, agents or affiliates ("Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, it (a) shall be held in confidence by each Receiving Party; (b) shall be disclosed to only those representatives who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used only for such purposes; and (c) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of use in writing by the Parties. If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party may disclose Proprietary Information; provided, however, that the Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible. The Disclosing Party may then either seek appropriate protective relief from all or part of such requirement. In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or certify as destroyed all Proprietary Information obtained from the other Party.
- 9.4 Assignment. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, upon written notice either Party may assign this Agreement or any rights and obligations hereunder without the other Party's consent to any LEC entity that the assigning Party controls, is controlled by, or is under common control with, or to any entity which acquires or succeeds to all or substantially all of the business or assets of the assigning Party. The effectiveness of an assignment shall be conditioned upon the

assignee's written assumption of the rights, obligations, and duties of the assigning Party. Any attempted assignment or transfer that is not permitted is void *ab initio*. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations.

- 9.5** No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either Party unless in writing and executed by the other Party. Neither the failure of either Party to insist upon a strict performance of any of this Agreement, nor the acceptance of any payments from either Party with knowledge of a breach of this Agreement by the other Party in the performance of its obligations hereunder, shall be deemed a waiver of any rights or remedies.
- 9.6** Notices. Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (a) delivered personally, (b) delivered by express delivery service, or (c) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested to the following addresses of the Parties:

<b>PRTC</b>	<b>LEVEL 3</b>
Piedmont Rural Telephone Cooperative, Inc. Attn: General Manager 201 Anderson Drive, P. O. Box 249 Laurens, South Carolina 29360 (864) 682-3131	Level 3 Communications, LLC 1025 Eldorado Boulevard Broomfield, CO 80021 Attention: Legal – Interconnection Services Contact Phone Number: (720) 888-2620 Facsimile: (720) 888-5134
With a copy to:	And:
Margaret M. Fox MCNAIR LAW FIRM, P.A. 1301 Gervias Street, 1 lth Floor Columbia, South Carolina 29201 Tel: (803) 799-9800	Level 3 Communications, LLC 1025 Eldorado Boulevard Broomfield, CO 80021 Attention: Director – Interconnection Services

Or to such other address as either Party shall designate by written notice. For operational issues, repair matters or other network assistance, the Parties agree to establish a designated contact and escalation process to resolve network or client issues.

- 9.7** No license under patents, copyrights or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

- 9.8 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.
- 9.9 If any part of this Agreement is held to be invalid for any reason, such invalidity shall affect only the portion of the Agreement which has been held invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.
- 9.10 This Agreement is governed by, and shall be interpreted in accordance with, all applicable federal and state law. Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement,. Without limiting the foregoing, each Party agrees to keep and maintain in full force and effect all permits, licenses, certificates, and other authorities needed to perform their respective obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed.

**Piedmont Rural Telephone Cooperative,  
Inc.**

By: *Randal J Odom* CFO  
[Name and title]  
Randal J Odom  
[Print name above]  
CFO  
[Print title above]  
Dated: 6-3-09

**Level 3 Communications, LLC**

By: *Jamie Moyer*  
[Name and title]  
Jamie Moyer  
[Print name above]  
Senior Director, Interconnection Services  
[Print title above]  
Dated: 5-27-09